



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**MEMORANDUM**

To: Interested Persons  
From: Paul Lavin, Assistant Director  
Date: January 30, 2007  
Re: Summary of Proposed Amendments to Ethics Commission Rules

The Commission is proposing changes to Chapters 1 (Procedures) and Chapter 3 (Maine Clean Election Act) of the Commission's Rules. The public hearing on the proposed rule changes will be held on Wednesday, February 14, 2007, at 9:00 a.m. at the Commission's office at 242 State Street, Augusta. Written and e-mailed comments are also welcome. The deadline for written and e-mailed comments is 5:00 p.m. on February 28, 2007.

This memo summarizes the proposed changes. Changes which are word and structure changes are listed at the end of each section of this memo.

**I. CHANGES TO CHAPTER 1: PROCEDURES**

All proposed changes to Chapter 1 are routine technical rules with the exception of a new provision (Section 7(7)) regarding voter guides and scorecards.

**Section 3 – Meetings (page 4)**

The proposed change in subsection 1 would require that the Commission meet once a month in any year in which primary and general elections are being held and eliminates the requirement that the Commission establish a meeting schedule at the beginning of the year.

**Section 4 – Initiation of Proceedings (pages 7 – 10)**

The changes to subsection 2(A) clarify that the Commission staff will review reports filed under chapter 13 and chapter 14 of Title 21-A. The proposed change eliminates the 15 day time period for remedying errors and omissions on campaign finance reports and gives the staff and the filer the flexibility to work out a reasonable time period, which may be longer or shorter than 15 days. The proposed change would also allow the staff to extend the time period. The list of examples of nonconformance with reporting requirements is eliminated. Paragraph 5 which is a detailed description of contributions is moved to Section 6 – Contributions and Other Receipts without change.

The provision that requires the Executive Director to submit a list of matters resolved administratively to the Commission at each meeting is eliminated. Added to the list of factors that the Director considers in recommending an action or a penalty to the Commission is whether a late filed report impacts an opposing candidate's eligibility for matching funds. The proposed change also eliminates the requirement that a copy of written requests for investigation be promptly sent to the Commission Chair. These requests as well as all related responses and materials are submitted to the full Commission in advance of every meeting. The requirement that the Director list all oral or insufficient reports of violations on the agenda is eliminated.

**Section 5 – Fact Finding and Investigations (page 12)**

The proposed change would allow the Commission staff to take testimony pursuant to a subpoena issued by the Commission.

**Section 6 – Contributions and Other Receipts (pages 12 – 14)**

A new subsection 1 is added to clarify that the date of a contribution is the date it is received by the candidate, candidate's committee, party committee, political action committee, or their agents.

A new subsection 7 is added to include the provisions moved from Section 4(2). There were no other changes to this subsection.

**Section 7 – Expenditures (pages 14 – 16)**

Subsection 1 is amended to clarify that when a consultant or other employee or agent of a candidate, candidate's committee or political action committee makes a payment for goods or services out of a retainer or fee, that payment must be reported by the candidate or committee as a separate expenditure on the candidate's or the political action committee's report. The proposed change clarifies that merely reporting the retainer or fee paid to the consultant is not sufficient.

Similarly, subsection 5 clarifies that when a candidate or agent pays for campaign-related goods or services with personal funds or a credit card, the payment to the vendor or payee must be reported, not just the reimbursement to the candidate or agent.

Subsection 7 is a new provision that creates a rebuttable presumption that an organization's voter guide or legislative scorecard is made to influence an election if more than 500 copies are sent within 60 days of a general election to individuals who are not members of the organization. Factors that will be considered in rebutting the presumption would be the content of the publication, its timing, and other purposes it serves. This is a major substantive rule.

**Section 8 – Prohibited Communications (page 16)**

This proposed change clarifies that Commission members may talk with the press or interested persons after it has made its final determination after the appeal period has expired or all administrative and judicial remedies have been exhausted.

**Minor changes**

Section 5 (page 12): "Likely to be of critical importance" is changed to "necessary."

Section 6(3) (formerly subsection 2) (page 13): Name and address are included in the items to be reported. "Traditionally" is replaced with "privately." In subsection 6 (formerly subsection 5), "debtor" is replaced with "customer."

Section 9(3), "privately" replaces "traditionally."

## **II. CHANGES TO CHAPTER 3 – MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS**

### **Section 2 – Procedures for Participation (pages 1 – 6)**

The proposed changes to subsection 1 clarify that any qualifying contributions received more than 5 days before a candidate files a Declaration of Intent with the Commission will not count towards the required minimum. Under the proposed changes in subsection 2(G), the Declaration of Intent will also include an affirmation that the candidate has read and will comply with the guidelines on using public funds.

In subsection 4 (page 4), the Commission proposes changes to the content of the receipt and acknowledgement form that candidates use in collecting qualifying contributions and signatures. The contributor's phone number will be required. The form will contain a clear and conspicuous statement that the candidate is seeking public funding for his or her campaign. If anyone other than the candidate collects the contributions and signatures, that person's name, address, and telephone number will have to be on the form as well as signed affirmation that the contributions were collected by valid means. Candidates will no longer be required to sign each form, but will affirm that he or she complied with all qualifying contribution requirements on the new certification request form (see below).

The change in paragraph G (page 6) clearly states that proof of voter verification submitted after the end of a qualifying period will not be accepted by the Commission.

Paragraph H is eliminated (page 6). This provision allowed candidates to submit photocopies of receipt and acknowledgement forms to the Commission as long as the verified originals are submitted to the Commission within 10 days.

### **Section 3 (pages 7 – 8)**

The changes to this section clarify, but do not alter the procedure to request certification with the exception of creating a form for the candidate to complete requesting certification.

### **Section 5 – Distribution of Funds to Certified Candidates (pages 9 – 15)**

With one exception, the changes to subsection 3 (page 10) do not alter how matching funds are calculated. The changes specify the steps in the calculations under three scenarios:

- When all candidates in the race are certified candidates;
- When the matching fund calculation is the result of the nonparticipating candidate's financial activity, and
- When a race has certified and nonparticipating candidates but the latter's campaign totals are less than those of the certified candidate(s).

The proposed change to the matching fund calculation is that seed money and an unspent primary campaign balance will not count in calculating matching funds if only certified candidates are involved.

Subsections E through J have not been changed other than being placed after new subsection D.

## **Section 7 – Record Keeping and Reporting (pages 16 – 18)**

The changes to subsection 1 would make it consistent with 2005 statutory changes which require a campaign treasurer to keep bank account records and vendor invoices. The Commission would have the ability to require the return of funds if a candidate or treasurer cannot produce supporting documentation for an expenditure or for the failure to keep records. The candidate would have an opportunity for a hearing prior to any determination requiring the return of funds.

The change to subsection 1(A) clarifies that MCEA funds can be commingled with unspent seed money and that matching funds can only be spent after the candidate receives authorization.

The Commission proposes eliminating the pro rata reimbursement for vehicle travel expenses based on actual expenses. The change would simplify travel reimbursement by requiring that all reimbursements use the standard mileage rate prescribed for employees of the State of Maine. The change also allows the Commission to disallow travel reimbursements that lack supporting documentation. Under the proposed change, candidates can choose to reimburse themselves and volunteers at a rate lower than the standard.

The Commission conducts audits of all MCEA gubernatorial candidates. The proposed change would allow primary and general election candidates to reserve \$1000 and \$2500, respectively, to defray the costs associated with an audit.

## **Minor changes**

Sections 1 and 5(3)(J) (pages 1 and 14): “Traditionally” is replaced with “privately.”

Section 2(3)(F) (page 3): This change is only a rewording of the paragraph.

Sections 4(1), 5(1)(A), and 5(3)(I)(pages 8, 9, and 14): “Bureau of Accounts and Control” is changed to “Office of the Controller.”

The informational note on page 9 is deleted.

Section 5(4) (page 14): This change is only a rewording of the subsection.